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**COURT OF APPEAL
STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

The Minutes

December 16, 2002

At 9:32 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Blease, Acting Presiding Justice; Davis, Associate Justice; Morrison, Associate Justice; and Guzman, Bailiff. Calendar called.

C038946 THE PEOPLE v. McCALL

Cause called. Rebecca P. Jones, court appointed counsel, argued for appellant. Judy Kaida, Deputy Attorney General, argued for respondent. Cause submitted.

At 9:47 a.m., the court recessed. At 9:51 a.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Morrison, Associate Justice.

C038317 BROCKEY et al. v. MOORE

Cause called. Suzanne Nicholson argued for appellant. Gary W. Rhoades, argued for, and Heather Bennett Cibula and Mark H. Cibula appeared for respondent. Cause submitted.

At 10:15 a.m., the court recessed. At 10:21 a.m., the court reconvened with Davis, Associate Justice; Morrison, Associate Justice; and Robie, Associate Justice.

**C039383 THE PEOPLE v. MARK O'CONNELL
C039629 THE PEOPLE v. HELEN O'CONNELL**

Cause called. Charles M. Bonneau, court appointed counsel, argued for defendant-appellant Mark O'Connell. Marcia Levine, court appointed counsel, argued for defendant-respondent Helen O'Connell. Harry Joseph Colombo, Deputy Attorney General, argued for plaintiff-respondent. Cause submitted.

At 11:36 a.m., the court recessed. At 2:02 p.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Morrison, Associate Justice.

C039029 THE PEOPLE v. GARZA

Cause called. John Steinberg, court appointed counsel, argued for appellant. Aaron R. Maguire, Deputy Attorney General, argued for respondent. Cause submitted.

At 2:23 p.m., the court recessed. At 2:27 p.m., the court reconvened with Sims, Associate Justice; Davis, Associate Justice; and Kolkey, Associate Justice.

C039603 THE PEOPLE v. HIGGINS

Cause called. John F. Schuck, court appointed counsel, argued for appellant. Alison Elle Aleman, Deputy Attorney General, argued for respondent. Cause submitted.

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At 2:59 p.m., the court recessed. At 3:07 p.m., the court reconvened with Raye, Associate Justice; Callahan, Associate Justice; and Robie, Associate Justice.

C040476 HEBERT et al. v. CITY OF GRASS VALLEY et al.

Cause called. Sandra Stanley argued for appellant. Alvin Gittisriboongul argued for respondent City of Grass Valley. Edward J. Kiernan argued for respondent County of Nevada. Cause submitted.

C039622 THE PEOPLE v. SHAYNE

Cause called. Sandra Gillies, court appointed counsel, argued for appellant. James Ching, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:58 p.m., the court recessed until 9:30 a.m., Tuesday, December 17, 2002.

C040674 KRALJ v. KRALJ (Not for Publication)

The award of attorney fees is reversed, in all other respects the judgment is affirmed. The parties shall bear their own costs on appeal.

BLEASE, Acting P.J.

We concur: Raye, J.
 Kolkey, J.

C038176 THE PEOPLE v. PHELPS

BY THE COURT:

Rehearing is granted in the above-entitled matter, and the opinion filed on November 15, 2002, is vacated.

BLEASE, Acting P.J.

December 17, 2002

At 9:31 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Scotland, Presiding Justice; Davis, Associate Justice; Nicholson, Associate Justice; and Rios, Bailiff. Calendar called.

C037544 THE PEOPLE v. MOORE

Due to Appellant's tardiness, this case was heard following case number C039906.

At 9:34 a.m., the court recessed. At 9:36 a.m., the court reconvened with Blease, Associate Justice; Nicholson, Associate Justice; and Hull, Associate Justice.

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- C039906 In re HEATHER E. et al.; DEPARTMENT OF HEALTH AND HUMAN SERVICES v. DENISE G.**
Cause called. Konrad S. Lee, court appointed counsel, argued for appellant. Lilly Frawley, county counsel, argued for respondent. Elizabeth H. Wright, appeared as county counsel, and submitted additional citations for respondent. Cause submitted.
- At 10:04 a.m., the court recessed. At 10:08 a.m., the court reconvened with Scotland, Presiding Justice; Davis, Associate Justice; and Nicholson, Associate Justice.
- C037544 THE PEOPLE v. MOORE**
Cause called. Richard Doctoroff, court appointed counsel, argued for appellant. James Ching, Deputy Attorney General, argued for respondent. Cause submitted.
- At 10:30 a.m., the court recessed. At 2:02 p.m., the court reconvened with Blease, Associate Justice; Raye, Associate Justice; and Callahan, Associate Justice.
- C037968 SPALETTA v. SPALETTA**
Cause called. John Hollenback argued for appellant. A. Peter Rausch, Jr. and Judy Anne Lovett argued for respondent. Cause submitted.
- At 2:26 p.m., the court recessed. At 2:29 p.m., the court reconvened with Blease, Associate Justice; Callahan, Associate Justice; and Hull, Associate Justice.
- C036601 McCain et al. v. COUNTY OF LASSEN et al.**
C038265 McCain et al. v. COUNTY OF LASSEN et al.
Cause called. R. Bruce Finch argued for appellants. Roberta Franklin and Matthew C. Bradford argued for respondents. Cause submitted.
- At 2:48 p.m., the court recessed. At 2:52 p.m., the court reconvened with Nicholson, Associate Justice; Hull, Associate Justice; and Kolkey, Associate Justice.
- C041202 SIERRA VISTA REGIONAL MEDICAL CENTER v. BONTA, as DIRECTOR, etc.**
Cause called. Patric Hooper, argued for appellant. Mateo Munoz, Deputy Attorney General, argued for respondent. Cause submitted.

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At 2:52 p.m., the court recessed. At 3:19 p.m., the court reconvened with Nicholson, Associate Justice; Hull, Associate Justice; and Kolkey, Associate Justice.

C038248 THE PEOPLE v. WOMACK
Cause called. David J. Macher, court appointed counsel, argued for appellant. Doris A. Calandra, Deputy Attorney General, argued for respondent. Cause submitted.

At 3:43 p.m., the court recessed until 9:30 a.m., Wednesday, December 18, 2002.

C034393 THE PEOPLE v. ROMERO et al. (Not for Publication)
The judgment (order of dismissal) is reversed. The matter is remanded to the trial court for further proceedings.
MORRISON, J.
We concur: Scotland, P.J.
 Hull, J.

C037907 THE PEOPLE v. CORIN (Not for Publication)
The judgment is affirmed.
DAVIS, J.
We concur: Scotland, P.J.
 Robie, J.

C039115 THE PEOPLE v. WESBECHER (Not for Publication)
The judgment is affirmed.
DAVIS, J.
We concur: Scotland, P.J.
 Kolkey, J.

C039119 THE PEOPLE v. LEE (Not for Publication)
The judgment is affirmed.
We concur: DAVIS, J.
 Blease, Acting P.J.
 Morrison, J.

C039517 THE PEOPLE v. KASIN (Not for Publication)
The judgment is affirmed.
NICHOLSON, J.
We concur: Blease, Acting P.J.
 Kolkey, J.

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- C039621 THE PEOPLE v. BRITT (Certified for Partial Publication)**
The judgment is affirmed. (CERTIFIED FOR PARTIAL PUBLICATION)
CALLAHAN, J.
We concur: Blease, Acting P.J.
 Hull, J.
- C039661 THE PEOPLE v. MEREDITH (Not for Publication)**
The judgment is modified...
The matter is remanded to the trial court for the preparation of an amended abstract of judgment reflecting the specified modifications. The trial court shall send a certified copy of the amended abstract to the Department of Corrections.
 DAVIS, Acting P.J.
We concur: Hull, J.
 Kolkey, J.
- C039950 THE PEOPLE v. MURPHY (Not for Publication)**
The judgment is affirmed. The superior court clerk is directed to prepare a corrected abstract of judgment of cases 01F04399, 98F10424, and 98F09308...
The clerk shall forward a certified copy of the corrected abstract of judgment to the Department of Corrections.
 NICHOLSON, J.
We concur: Sims, Acting P.J.
 Kolkey, J.
- C040613 THE PEOPLE v. JOHANSEN (Not for Publication)**
The judgment is modified... As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect these modifications and to forward a certified copy of the amended abstract to the Department of Corrections.
 SCOTLAND, P.J.
We concur: Blease, J.
 Raye, J.
- C040648 THE PEOPLE v. UTTERBACK (Not for Publication)**
The judgment is affirmed.
 BLEASE, Acting P.J.
We concur: Callahan, J.
 Robie, J.

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- C040703 THE PEOPLE v. BUCIO (Not for Publication)**
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Callahan, J.
Robie, J.
- C041140 THE PEOPLE v. MOORE (Not for Publication)**
The probation conditions are modified as follows...
As so modified, the judgment (order of probation) is affirmed.
DAVIS, Acting P.J.
We concur: Hull, J.
Kolkey, J.
- C034625 RIEGER v. ARNOLD et al. (Certified for Partial Publication)**
C0353836
The judgment and the postjudgment orders are affirmed. The defendant's request for recovery of appellate legal fees is denied. The defendants shall recover their costs on appeal. (CERTIFIED FOR PUBLICATION.)
DAVIS, Acting P.J.
I concur: Hull, J.
I concur in the result. I also concur in the majority opinion except for the part defining the term "perpetrator" as found in Evidence Code section 1106. subdivision (b)...
Finally, while I do not agree with the majority concerning the precise definition of the "perpetrator," I concur that, whatever the definition, the plaintiff was not prejudiced by the admission of her sexual conduct in the case. I therefore concur in the judgment. (CERTIFIED FOR PUBLICATION.)
Nicholson, J.
- C037465 HOOPER v. THRIFTY PAYLESS, INC. (Not for Publication)**
The judgment is affirmed. Thrifty shall recover its costs on appeal.
KOLKEY, J.
We concur: Morrison, Acting P.J.
Callahan, J.
- C039895 LUCCHESI BOOT, INC. v. IBRAHIM et al. (Not for Publication)**
The judgment is affirmed.
CALLAHAN, J.
We concur: Scotland, P.J.
Hull, J.

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- C040041 CLARKE v. HOLDEN (Not for Publication)**
The order filed November 6, 2002, denying the motion to terminate lien, is affirmed. Respondent's motion to dismiss the appeal or strike appellant's brief is denied as moot.
 DAVIS, J.
We concur: Sims, Acting P.J.
 Raye, J.
- C040663 FAITH et al. v. BELL, JR. et al. (Not for Publication)**
The judgment is affirmed. Costs on appeal are awarded to respondents. (Cal. Rules of Court, rule 26 (a) (1).)
 ROBIE, J.
We concur: Blease, Acting P.J.
 Morrison, J.
- C042292 TIM M. v. SUPERIOR COURT OF BUTTE COUNTY and BUTTE COUNTY
CHILDREN'S SERVICES DIVISION et al. (Not for Publication)**
The petition is denied.
 SIMS, Acting P.J.
We concur: Nicholson, J.
 Hull, J.
- C040225 LAFOREST v. CITY OF MT. SHASTA and DECLERK ENTERPRISES et al.**
BY THE COURT:
Appellant's petition for rehearing is denied.
 DAVIS, Acting P.J.
- C041595 In re TYRONE W.; DEPARTMENT OF HEALTH AND HUMAN SERVICES
v. NATASHA S.**
BY THE COURT:
Appellant's motion to vacate dismissal is granted. The order of November 20, 2002, dismissing the appeal is vacated, and the appeal is reinstated.
Appellant's motion to substitute in pro. per. is granted. The records of this court will reflect that Natasha S. is representing herself on appeal.
The time within which to file appellant's opening brief is extended to January 16, 2003. No further time will be granted to file appellant's opening brief.
 BLEASE, Acting P.J.

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At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Raye, Associate Justice; Callahan, Associate Justice; Robie, Associate Justice; and Facey, Bailiff. Calendar called.

C040629 FORNASERO v. RDJ FARMS et al.

Cause called. William H. Parish argued for appellant. James R. Mehlhaff argued for respondent. Cause submitted.

At 9:55 a.m., the court recessed. At 9:58 a.m., the court reconvened with Scotland, Presiding Justice; Raye, Associate Justice; and Callahan, Associate Justice.

C037297 THE PEOPLE v. OMAR R.

Cause called. Donal M. Hill, court appointed counsel, argued for appellant. Jay A. Mark, Deputy Attorney General, argued for respondent. Cause submitted.

C039391 THE PEOPLE v. OMAR R.

Cause called. Donal M. Hill, court appointed counsel, argued for appellant. Jay A. Mark, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:37 a.m., the court recessed. At 10:41 p.m., the court reconvened with Scotland, Presiding Justice; Callahan, Associate Justice; and Kolkey, Associate Justice.

**C039417 THE PEOPLE ex rel. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
v. MILLER BREWING COMPANY**

Cause called. Stacy Boulware Eurie, Deputy Attorney General, argued for appellant. Richard Van Duzer argued for respondent. Cause submitted.

At 11:11 a.m., the court recessed. At 2:00 p.m., the court reconvened with Callahan, Associate Justice; Hull, Associate Justice; and Robie, Associate Justice.

C037568 HENRICK v. FUERST

Cause called. Andrew N. Chang argued and Carla Ann DeDominicis appeared only for appellants. Larry L. Hill argued for respondents. Cause submitted.

At 2:26 p.m., the court recessed. At 2:31 p.m., the court reconvened with Raye, Associate Justice; Callahan, Associate Justice; and Hull, Associate Justice.

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**C040142 DUARTE & WITTING, INC. v. NEW MOTOR VEHICLE BOARD and
DAIMLERCHRYSLER MOTOR CORPORATION
(CERTIFIED FOR PUBLICATION)**

The judgment is affirmed. The New Motor Vehicle Board and
DaimlerChrysler shall recover their costs on appeal.

SIMS, Acting P.J.

We concur: Nicholson, J.
Raye, J.

**C038254 THE PEOPLE v. DAVIS
BY THE COURT:**

Appellant's petition for rehearing is denied.
SIMS, Acting P.J.

December 19, 2002

At 9:33 a.m., the court met in the Library & Courts Building to begin its court
calendar session. Present: Scotland, Presiding Justice; Sims, Associate Justice;
Callahan, Associate Justice; and Rios, Bailiff. Calendar called.

C038787 SILLER v. SILLER HELICOPTERS

Cause called. Charles E. Tillage argued for appellant. Chester Morris argued for
and Al. J. Carrion appeared only for respondent. Cause submitted.

At 10:09 a.m., court recessed. At 10:15 a.m. court reconvened with Sims,
Associate Justice; Morrison, Associate Justice; and Callahan, Associate Justice.

C040271 THE PEOPLE ex rel., etc. v. BRUNIUS

Cause called. Edna Walz, Deputy Attorney General, argued for appellant. Freda
Pechner, argued for respondent. The case is not submitted. Respondent is given
10 days to submit a motion of appellant. The case will be submitted thereafter.

C038663 PLATZER, a Minor, etc., et al. v. MAMMOTH MOUNTAIN SKI AREA

Cause called. Robert E. Schroth argued for appellant. Mark D. Tokunaga argued
for respondent. Cause submitted.

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**C039485 COUNTY OF KERN et al. v. STATE WATER RESOURCES CONTROL BOARD
et al. and CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL
BOARD et al.**

Cause called. Michael M. Hogan argued for appellants, County of Kern. Dante John Nomellini, Jr. argued for and John Herrick appeared only for appellants Central Delta. Mark Melnick, Deputy Attorney General, argued for respondents. Bradley R. Hogin appeared for Real Party In Interest, City of Oxnard. Mark A. Jones appeared only for real Party In Interest, Responsible Biosolids, etc. Cause submitted.

At 11:40 a.m., court recessed until 9:30 a.m. Friday December 20, 2002.

C037200 THE PEOPLE v. NGUYEN (Not for Publication)

The judgment is affirmed.

DAVIS, J.

We concur: Scotland, P.J.

Robie, J.

C038137 THE PEOPLE v. BEAN et al. (Not for Publication)

C038271 We consolidated defendants' appeals for purposes of disposition. We affirm both judgments.

MORRISON, J

We concur: Sims, Acting P.J.

Hull, J.

C040058 THE PEOPLE v. BOWYER (Not for Publication)

The judgment is affirmed.

SIMS, Acting P.J.

We concur: Nicholson, J.

Kolkey, J.

C040344 THE PEOPLE v. NEGRETTE (Not for Publication)

The judgment is affirmed. The clerk of the superior court is directed to correct the order of probation to reflect that the violation of Penal Code section 272 is a misdemeanor.

KOLKEY, J.

We concur: Scotland, P.J.

Robie, J.

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- C040611 THE PEOPLE v. FISHER (Not for Publication)**
The judgment is modified to include imposition of a \$200 restitution fine under section 1202.45, which is suspended unless defendant violates parole. As modified, the judgment is affirmed.
SIMS, Acting P.J.
We concur: Davis, J.
 Raye, J.
- C040759 THE PEOPLE v. DAVIS (Not for Publication)**
The judgment is affirmed.
SIMS, Acting P.J.
We concur: Davis, J.
 Raye, J.
- C039787 EGAN v. HECKMAN, as Trustee, etc. (Not for Publication)**
The order is affirmed.
DAVIS, Acting P.J.
We concur: Morrison, J.
 Robie, J.
- C036740 HEAGERTY et al. v. COUNTY OF PLACER et al. and TROY CALDWELL
C037794**
BY THE COURT:
Appellant's petition for rehearing is denied.
DAVIS, J.
I would grant rehearing.
BLEASE, Acting P.J.
- C037727 TYLER, JR. v. LANIUS (Not for Publication)**
BY THE COURT:
It is ordered that the opinion filed herein on November 19, 2002, be modified in the following manner...
This modification does not change the judgment.
The petitions for rehearing are denied.
FOR THE COURT:
NICHOLSON, Acting P.J.
MORRISON, J.
HULL, J.
- C037901 THE PEOPLE v. BARBER**
BY THE COURT:
Appellant's petition for rehearing is denied.
SCOTLAND, P.J.

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C037901 THE PEOPLE v. BARBER

BY THE COURT:

Appellant's request to publish the opinion filed on November 21, 2002, is denied.

SCOTLAND, P.J.

December 20, 2002

At 9:31 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Blease, Acting Presiding Justice; Nicholson Associate Justice; Kolkey, Associate Justice; and Guzman, Bailiff. Calendar called.

C038802 THE PEOPLE v. CARMONY

Cause called. Victor S. Haltom, court appointed counsel, argued for appellant. David Andrew Eldridge, Deputy Attorney General, argued for respondent. Cause submitted.

At 9:51 a.m. the court recessed. At 9:53 a.m., the court reconvened with Sims, Associate Justice; Nicholson, Associate Justice; and Kolkey, Associate Justice.

C038525 GEITNER v. CONNELL, as State Controller, etc. and DESMOND

Cause called. Richard T. Tosaw argued for appellant. Lynard C. Hinojosa argued for respondent. Cause submitted.

At 10:08 a.m., court recessed until 9:30 a.m. January 21, 2003.

C037699 THE PEOPLE v. HUBBARD (Not for Publication)

The judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment reflecting concurrent terms of eight years for the subordinate counts and to forward a certified copy of said abstract to the Department of Corrections.

RAYE, J.

We concur: Scotland, P.J.

Robie, J.

C038181 THE PEOPLE v. WAKEFIELD

(Not For Publication)

C038703 THE PEOPLE v. RAYA

(Not For Publication)

The judgments are affirmed.

MORRISON, J.

We concur: Blease, Acting P.J.

Hull, J.

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- C039444 THE PEOPLE v. GREEN (Not for Publication)**
The judgment is affirmed.
KOLKEY, J.
We concur: Davis, Acting P.J.
Hull, J.
- C040506 THE PEOPLE v. KONECNE (Not for Publication)**
The judgment is affirmed.
SIMS, Acting P.J.
We concur: Davis, J.
RAYE, J.
- C041172 THE PEOPLE v. AGUILAR (Not for Publication)**
The judgment is modified... The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections.
SIMS, Acting P.J.
We concur: Davis, J.
Raye, J.
- C030059 HILLENBRAND, INC. et al. v. INSURANCE COMPANY OF NORTH AMERICA et al. (Certified for Publication)**
The judgment in favor of INA is reversed. The judgment in favor of Hillenbrand but reducing the award of punitive damages is affirmed. Hillenbrand is awarded costs on appeal. **[CERTIFIED FOR PUBLICATION.]**
RAYE, J.
We concur: Sims, Acting P.J.
Nicholson, J.
- C038282 CALFARM INSURANCE COMPANY v. TAPEWORM VIDEO DISTRIBUTORS, INC. (Not for Publication)**
BY THE COURT:
It is ordered that the opinion filed herein on November 20, 2002, be modified as follows:
On page 4, delete the last two sentences of the first full paragraph... There is no change in the judgment.
FOR THE COURT:
BLEASE, Acting P.J.
SIMS, J.
ROBIE, J.

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- C038865 BOYD, et al. v. EASTIN, as Superintendent of Public Instruction et al.**
(Not for Publication)
The trial court's order denying the petition for writ of mandate and judgment denying declaratory relief are reversed. The case is remanded with instructions to enter (1) a new order granting the petition for writ of mandate and (2) judgment declaring that the portion of former section 1034 (c) of title 5 of the California Code of regulations requiring improvement in test scores between 1998 and 1999 is invalid and ineffective. The Department's request for judicial notice is denied. The plaintiffs' shall recover their costs on appeal.
NICHOLSON, Acting P.J.
We concur: Raye, J.
 Hull, J.
- C039913 SCHMIDT v. SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM**
(Not for Publication)
The judgment is affirmed.
BLEASE, Acting P.J.
We concur: Hull, J.
 Robie, J.
- C040126 ROWAN v. JOHNSON** **(Not for Publication)**
The judgment is affirmed. Ken Rowan is awarded his costs on appeal. The issue of Ken Rowan's request for attorney fees on appeal is remanded to the trial court.
DAVIS, Acting P.J.
We concur: Callahan, J.
 Kolkey, J.
- C040813 THOMPSON v. LINK et al.** **(Not for Publication)**
The judgment is affirmed. Respondents shall receive costs on appeal.
SIMS, Acting P.J.
We concur: Nicholson, J.
 Morrison, J.
- C041254 GEE v. CITY OF SACRAMENTO CIVIL SERVICES BOARD et al. and**
CITY OF SACRAMENTO **(Not for Publication)**
The judgment is affirmed.
CALLAHAN, J.
We concur: Sims, Acting P.J.
 Davis, J.

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C039149 HARTWICK v. D.B. FITE PROPERTIES, INC. et al.

THE COURT:

In a petition for rehearing, defendants D.B. Fite Properties, Inc. and Linda L. Flood, Inc., argue this court applied the wrong standard...

Defendants' petition for rehearing is denied.

SIMS, Acting P.J.

NICHOLSON, J.

ROBIE, J.